

OLL 85-0427/1
21 February 1985

MEMORANDUM FOR: Director of Personnel
Director for Policy, Analysis and Evaluation
Acting Chief, ALD/OGC
Deputy Chief, ICAD/OGC

STAT

FROM:

Legislation Division
Office of Legislative Liaison

THROUGH:

Chief, Legislation Division
Office of Legislative Liaison

SUBJECT:

Request for Comments:
Draft Response to Dymally Letter

1. Attached for your review and comment please find a copy of a draft response to a letter from Representative Dymally to the Director concerning "excepted service" positions within the Agency. Also attached is a copy of the legislation to which the letter refers, a copy of the introductory remarks, and the original Dymally letter.

2. I would ask for your comments by Monday, February 25, 1985.

Attachments:

1. Draft letter to Representative Dymally
2. H.R. 917
3. Original of Dymally letter
4. Introductory Remarks

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99TH CONGRESS
1ST SESSION

H. R. 917

To amend title 5, United States Code, to extend to certain employees in the excepted service the same procedural and appeal rights as are afforded to employees in the competitive service with respect to certain adverse personnel actions.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 1985

Mr. DYMALLY (for himself, Ms. OAKAR, Mrs. SCHROEDER, Mr. HOYER, and Mr. BARNES) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To amend title 5, United States Code, to extend to certain employees in the excepted service the same procedural and appeal rights as are afforded to employees in the competitive service with respect to certain adverse personnel actions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 7511(a)(1) of title 5, United States Code, is
4 amended—
5 (1) by striking out “and” at the end of subpara-
6 graph (A);

1 (2) by inserting "and" at the end of subparagraph
2 (B); and

3 (3) by adding at the end thereof the following:

4 “(C) an individual in an Executive agency in
5 the excepted service (other than an individual
6 under subparagraph (B)) who has completed 2
7 years of current continuous service in the same or
8 similar positions;”.

9 (b) Section 7511(c) of title 5, United States Code, is
10 repealed.

11 (c) The amendment made by subsection (a)(3) shall not
12 be considered for purposes of section 1005(a) of title 39,
13 United States Code.

14 SEC. 2. This Act shall be effective after the expiration
15 of the 30-day period beginning on the date of enactment of
16 this Act.

○

MERVYN M. DYMALLY
THIRTY-FIRST DISTRICT
CALIFORNIA



Executive Registry	
85-	594

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ON JUDICIARY AND EDUCATION

Congress of the United States
House of Representatives
Washington, D.C. 20515

LEGISLATIVE LIAISON
85-6437

January 29, 1985

Honorable William J. Casey
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Casey:

In recent months, several cases have been brought to my attention which involve the termination of Federal employees in the Excepted Service. As a Member of the Committee on Post Office and Civil Service, these cases are of concern to me because they demonstrate the complete lack of due process afforded Excepted Service employees upon termination from their positions, with the exception of those who are veterans' preference eligibles.

While I understand the rationale for excepting certain occupations from the competitive service, I believe that all Federal employees who have served in the government for two years should be afforded due process rights before they are summarily dismissed. Therefore, I intend to introduce remedial legislation which will ensure that Excepted Service employees, who have served continuously for twenty-four (24) months and are not in confidential or policy-determining positions, are given the administrative due process rights enjoyed by career employees in the competitive service.

The Office of Personnel Management has informed me that nearly one million Civil Service employees hold "excepted" positions. While some of these employees are granted career-status after several years, others serve in the Federal government for many years without ever gaining protection from adverse personnel actions, as set forth in Chapter 75 of Title V. In order to assist in this review of the Excepted Service, I would appreciate your providing the following information:


1. The number of employees in your department/agency who are in Excepted Service positions. Please note how many of these employees are in Schedule C or Senior Executive Service (SES) positions, or are appointments confirmed by the Senate.

Honorable William J. Casey
January 29, 1985
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2. The number of these Excepted Service employees who are veterans' preference eligibles.
3. A breakdown of the "excepted" workforce by occupation.
4. The average number of years of Federal government service for each "excepted" occupation.
5. The number of Excepted Service employees who have been terminated from your department/agency in fiscal years 1982 through 1984.
6. An explanation of special department/agency guidelines, if any, which govern adverse personnel actions against Excepted Service employees. This information will be compared with the rights extended to employees in the competitive service in adverse action situations.

Thank you very much for your assistance in this matter.
Your response by February 28th will be appreciated.

Sincerely,


MERVYN M. DYMALLY
Member of Congress

February 4, 1985

CONGRESSIONAL RECORD — Extensions of Remarks

E 337

LONG-OVERDUE PROTECTION
FOR CIVIL SERVICE EMPLOYEES

HON. MERVYN M. DYMALLY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 4, 1985

● Mr. DYMALLY. Mr. Speaker, today I am introducing legislation which I believe provides long-overdue protection for the many civil service employees in the excepted service. My bill will give excepted service employees the right to administrative due process when adverse personnel actions are taken against them—a right they do not now have.

A wide variety of positions in the civil service are excepted from the competitive process. These positions include attorneys, physicians, scientists, chaplains, handicapped workers, and certain midlevel administrative positions. Positions may be excepted from the competitive service by law, Executive order, or by the Office of Personnel Management. There are over one-half million excepted service employees in executive agencies.

Under current law, Federal employees in the competitive service have the right to receive advance written notice of an adverse action and to respond in writing to the action. They also have the right to appeal an adverse action to the Merit Systems Protection Board, an independent agency established by the Civil Service Reform Act of 1978. These procedures also apply to veterans' preference eligibles in the excepted service. However, all other excepted service employees have no way to defend themselves in an adverse action situation, even though they may have served in the Federal Government for many years. They may be summarily terminated without even knowing the reason for such an action.

The bill I am introducing, with my colleagues, Ms. OAKAR, Mrs. SCHROEDER, Mr. HOYER, and Mr. BARNES, will entitle employees in an executive agency who have served 2 continuous years in the excepted service to these same procedural rights when an adverse action is taken. The bill will not cover personnel in positions which are confirmed by the Senate, or are confidential or policy determining in character.

I strongly believe that excepted service employees will be better able to serve the American public if they are free from the fear of adverse actions taken against them without cause. The right to due process and to defend one's work and career is fundamental to all working men and women. Those in public service should be no exception to the rule.●

A MEMORIAL TRIBUTE TO JOHN
W. JACKSON, JR.

HON. DENNIS M. HERTEL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, February 4, 1985

● Mr. HERTEL of Michigan. Mr. Speaker, I rise today to express my deepest sorrow upon the loss of a close friend and loyal public servant, Michigan Assistant Attorney General John W. Jackson, Jr. Mr. Jackson was in charge of the Michigan attorney general's office in Detroit and, prior to that, represented the Michigan Department of Treasury.

John Jackson, Jr., was a dedicated professional and an exceptionally talented public servant. Mr. Jackson's accomplishments and contributions to Michigan's legal system are certainly impressive and will continue to have an impact on the legal process.

Over the years, many young lawyers, fresh out of law school, served in the attorney general's office and they always found a friend and confidant in John Jackson, Jr. I am proud to have been one of those lawyers.

Mr. Jackson served the State of Michigan with tremendous patience, diligence, conviction, and dedication and always gave of himself to his fellow man. Mr. Jackson's honesty and integrity were the factors that set him apart from other public servants. John Jackson, Jr., was a great family man who dedicated his life to helping others. We thank God for sharing John with us. His quality of professionalism will live on in those he inspired by his example.

I join the fine people of the State of Michigan in paying our highest respect to John Jackson, Jr., and we sorrowfully extend our deepest sympathy to his wife, Berniece, and his son, Javon. We greatly appreciate the outstanding contributions of John Jackson, Jr., to the State of Michigan. He will always be remembered in our prayers.●

THE SECONDARY SCHOOLS
BASIC SKILLS ACT

HON. JAMES J. FLORIO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Monday, February 4, 1985

● Mr. FLORIO. Mr. Speaker, I am pleased today to join my colleague, FAY WILLIAMS of Montana, in reintroducing the Secondary Schools Basic Skills Act. I would urge my colleagues to join us in supporting this effort to provide necessary funding for assisting local education agencies with large numbers of economically disadvantaged students in upgrading their basic skills.

Mr. Speaker, our Nation's secondary schools are in the midst of an economic and academic crisis. Secondary

schools across this country are experiencing increased dropout rates, and more and more high school students are unable to pass the required basic skills tests necessary not only for graduation but also for functioning in an increasingly complex society and work environment. The President's Commission on Excellence in Education focused our attention to educational studies that have indicated that proficiency in basic skills of reading, writing and comprehension has seriously faltered over the past 20 years. At the time, it is estimated that 23 million Americans, and approximately 13 percent of all 17-year-olds, do not have adequate reading, writing, and comprehension skills to function in everyday life. Last year, in my own State of New Jersey, over 50,000 entering college freshmen took the New Jersey College Basic Skills Test. Less than a third proved proficient in verbal skills and only 12 percent were proficient in elementary algebra.

Despite this proven need in our Nation's high schools for increased attention, our secondary schools are receiving very little funding to strengthen their basic academic program. Department of Education analyses indicate that 77 percent of chapter 1 funds are invested in preschool, kindergarten and lower elementary grades. Our secondary school students are being neglected to the detriment of their future and our country's future.

To correct this inequity, the Secondary Schools Basic Skills Act would provide secondary schools with a 6-year authorization of \$900 million annually to upgrade their basic skills program. Any secondary school in which 20 percent of the student body is economically disadvantaged, would be eligible for funding. The funds would be used for the benefit of all students at that school that are classified as low achievers, and not merely those low-achievers that are also economically disadvantaged. Funding would be discontinued at the end of 2 years if that school could not demonstrate progress in improving the basic skills of its student body. We have however included a 1-year waiver provision if extenuating circumstances precluded an improvement within the space of 2 years.

During the 98th Congress, when Mr. WILLIAMS and I introduced this bill, two concerns were expressed by educators relating to the authority of the National Institute of Education (NIE) to administer the program and with the discontinuation of funding if the school could not demonstrate an improvement after 2 years. We have modified our new bill to address these concerns by eliminating the provision establishing a National Secondary Schools Basic Skills panel under NIE authority and placing the program directly under the supervision of the Department of Education and the Secretary of Education. This should eliminate further layers of bureaucracy and